

Attachment A

Sample Contract

CONTRACT #{Contract Number}

PURCHASE OF SERVICE AGREEMENT

The State of North Dakota, acting through its North Dakota Department of Human Services, Economic Assistance Policy Division (State), has determined the services identified in the Scope of Service paragraph below should be purchased.

{Vendor} (Vendor), {Address}, {City}, {State} {Zip}, proposes to provide those services.

State and Vendor therefore enter into the following:

1. TERM OF THE AGREEMENT

This agreement runs from July 1, 2016, through June 30, 2017.

a. No Automatic Renewal

This agreement will not automatically renew.

b. Extension Option

State reserves the right to extend the agreement for an additional period of time, not to exceed 12 months, beyond the current termination date of the agreement.

c. Renewal Option

State may renew this agreement upon satisfactory completion of the initial agreement term. Renewals are based on the availability and approval of funds. State reserves the right to execute up to three options to renew this agreement under the same terms and conditions for a period of 24 months each. State may negotiate with the successful offeror to adjust the firm fixed price for each renewal period. State will provide written notice to Vendor of its intent to renew this agreement at least 30 days before the agreement's expiration date.

2. SCOPE OF SERVICE

Vendor shall administer the Alternative to Abortion Program statewide as outlined in State's Request for Proposal (RFP) number 325-16-405-008, dated April 5, 2016, and Vendor's proposal, dated _____, which are both made a part of this agreement by their reference here.

3. COMPENSATION

State, upon receipt and approval of SFN 1763 Request for Reimbursement or other form required by State, shall pay Vendor \$_____ per month for completing the scope of service. Total payment under this agreement may not exceed \${Total amount}. Vendor shall submit its request for reimbursement to State monthly.

Vendor shall submit its final payment request to State no later than 15 days after the expiration or termination of this agreement.

4. TERMINATION

a. Termination by Mutual Agreement or Notice

This agreement may be terminated at any time by mutual consent of both parties executed in writing.

b. Early Termination in the Public Interest

State is entering into this agreement for the purpose of carrying out the public policy of the state of North Dakota, as determined by its Governor, Legislative Assembly, and Courts. If this agreement ceases to further the public policy of the state of North Dakota, State, in its sole discretion, by written notice to Vendor, may terminate this agreement in whole or in part.

c. Termination for Lack of Funding or Authority

State may terminate the whole or any part of this agreement, effective upon delivery of written notice to Vendor or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause

State may terminate this agreement effective upon delivery of written notice to Vendor, or any later date stated in the notice:

- 1) If Vendor fails to provide services required by this agreement within the time specified or any extension agreed to by State; or
- 2) If Vendor fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in

accordance with its terms.

The rights and remedies of State provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

5. NONPERFORMANCE

Failure by Vendor to perform the terms of this agreement constitutes a breach of contract and will result in the termination of the agreement. If a breach by Vendor renders the agreement impossible of performance by Vendor and is caused by circumstances beyond the control of Vendor, and through no fault of Vendor, the agreement will be terminated and State may set off, against any liability or obligations owed to Vendor under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

6. FORCE MAJEURE

Vendor shall not be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond Vendor's reasonable control, and Vendor gives notice to State immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

7. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

Vendor understands that this agreement is a one-time agreement, and acknowledges that it has received no assurances that this agreement may be extended beyond its expiration date.

8. VENDOR ASSURANCES

This agreement will be construed according to the laws of the State of North Dakota. In connection with furnishing supplies or performing work under this agreement, persons who contract with or receive funds to provide services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this agreement including the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, and the Pro-Children Act of 1994.

By signing this agreement Vendor certifies that neither Vendor, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the State or Federal Government.

Vendor must be an approved Vendor with the Office of Management and Budget within the State of North Dakota as required by North Dakota Century Code § 54-44.4-09.

9. AUTHORITY TO CONTRACT

Vendor may subcontract with qualified vendors of services, provided that any subcontract acknowledges the binding nature of this agreement, and incorporates this agreement, together with its attachments as appropriate. Vendor is solely responsible for the performance of any subcontractor. Vendor may not contract for or on behalf of or incur obligations on behalf of State. Vendor may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

10. INDEPENDENT ENTITY

Vendor is an independent entity under this agreement. Vendor, its employees, agents, or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this agreement may be construed to represent the creation of an employer/employee relationship between State and Vendor. Vendor retains sole and absolute discretion in the manner and means of carrying out Vendor's activities and responsibilities under this agreement, except to the extent specified in this agreement.

11. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Vendor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Vendor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Vendor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

12. INSURANCE

Vendor shall secure and keep in force during the term of this agreement and Vendor shall require all subcontractors, prior to commencement of an agreement between Vendor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
 - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code section 54-12-08;
 - d) a provision that Vendor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Vendor's insurance and shall not contribute with it;
 - e) cross liability/severability of interest for all policies and endorsements;
 - f) the legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;

- g) the insolvency or bankruptcy of the insured Vendor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Vendor from meeting the retention limit under the policy.
- 6) The Vendor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

13. NOTICE

Any notice or other communication required under this agreement must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

{Vendor} {Address} {City} , {State} {Zip}	OR	ND Department of Human Services Economic Assistance Policy Division 600 E. Boulevard Avenue, Dept. 325 Bismarck, ND 58505-0250
---	----	---

Notice provided under this provision does not meet the notice requirements for monetary claims against State found at North Dakota Century Code § 32-12.2-04.

14. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

This agreement, including the following documents, constitutes the entire agreement between Vendor and State. There are no understandings, agreements, or representations, oral or written, not specified within this agreement. No alteration, amendment, or modification of this agreement is effective unless it is reduced to writing, signed by the parties, and attached to the agreement.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence:

- a. The terms of this agreement as may be amended;
- b. State's Solicitation Amendment #1 to RFP number 325-16-405-008, dated _____;
- c. State's RFP number 325-16-405-008, dated April 5, 2016;
- d. Vendor's proposal, dated _____, in response to RFP number 325-16-405-008.

If any inconsistency exists between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement control.

15. SEVERABILITY

If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement does not contain the illegal or unenforceable term.

16. APPLICABLE LAW AND VENUE

This agreement is governed by and construed according to the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

17. ASSIGNMENT

Neither party may assign this agreement or the party's rights under this agreement without the written approval of the other party. Approval to assign may not be unreasonably withheld. This agreement is equally binding on the respective parties, and their successors and assigns.

18. SPOILIATION – PRESERVATION OF EVIDENCE

Vendor shall promptly notify State of all potential claims that arise or result from this agreement. Vendor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.

19. WORKS FOR HIRE

Vendor acknowledges that all work(s) under this agreement is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to State all rights and interests Vendor may have in the work(s) it prepares under this agreement, including any right to derivative use of the work(s). All software and related materials developed by Vendor in performance of this agreement for State shall be the sole property of State, and Vendor hereby assigns and transfers all its right, title, and interest therein to State. Vendor shall execute all necessary documents to enable State to protect State's intellectual property rights under this section.

20. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created for State or purchased by State under this agreement belong to State and must be delivered to State at State's request upon expiration or termination of this agreement.

21. CONFIDENTIAL INFORMATION

Vendor shall not use or disclose any information it receives from State under this agreement that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by State. State shall not disclose any information it receives from Vendor that Vendor has previously identified as confidential and that State determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in North Dakota Century Code chapter 44-04. The duty of State and Vendor to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

22. COMPLIANCE WITH PUBLIC RECORDS LAWS

Vendor understands that, except for disclosures prohibited in this agreement, State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records obtained or generated by Vendor under this agreement, except for records that are confidential under this agreement, may be open to the public upon request under certain circumstances under the North Dakota open records law. Vendor agrees to contact State immediately upon receiving a request for information under the open records law and to comply with State's instructions on how to respond to the request.

23. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this agreement, and State is the prevailing party, Vendor shall pay State's reasonable attorney fees and costs in connection with the lawsuit, except when prohibited by North Dakota Century Code § 28-26-04.

24. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

25. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Vendor shall comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. Vendor shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Vendor also shall have and keep current at all times during the term of this agreement all licenses and permits required by law.

26. ACCESS TO BOOKS AND RECORDS

Vendor shall provide State, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Vendor

which are pertinent to the services provided under this agreement for the purpose of making an audit or examination, or for making excerpts and transcripts. All records, regardless of physical form, and the accounting practices and procedures of Vendor relevant to this agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. Vendor shall maintain all of these records for at least three (3) years following completion of this agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.

{Vendor}

By _____

DATE

Its _____

{XX-XXXXXXX}
Vendor's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By _____

MAGGIE D. ANDERSON
EXECUTIVE DIRECTOR
DATE

By _____

CHERYL FITZGERALD
CONTRACT OFFICER
Approved for form and content
DATE